Reserved Judgment

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Sales Tax Revision No. 108 of 2003
(Old No. 1378 / 1992)

The Commissioner of Sales Tax,
U.P. Lucknow
…..……. Applicant/Revisionist

Versus

M/s Amitabh Textile Mills Ltd.
Prem Nagar, Dehradun
……. Opposite Party

Mr. Sayeed Nadeem, learned Standing Counsel for revisionist.
None appeared on behalf of the assessee / opposite party.

Hon'ble Prafulla C. Pant, J.

Heard learned Standing Counsel appearing on behalf of the respondent. Despite service of notice, no one turned up on behalf of the assessee.

2) This revision was filed before the Allahabad High Court in the year 1992, and received by this Court by transfer under Section 35 of the U.P. Reorganization Act, 2000, for its disposal.

3) The revision is preferred by Commissioner of Sales Tax, Lucknow under Section 11(1) of the U.P. Sales Tax Act, 1948, and is directed against the order dated 28.04.1992, passed by Sales Tax Tribunal, Dehradun.

4) The two questions of law involved in this revision are as under:

1. *"Whether, the Sales Tax Tribunal was legally justified in holding that the interest on the tax payable on the amount against which Form-C was not submitted till the assessment stage should have been calculated from three months after passing of the original assessment order despite the fact that such tax became due under the Act from the succeeding month during which the sales were made and the interest became payable?"*
2. *"Whether, even having relied on case law in M/s Krishna Das & Brothers case; 1981 U.P.T.C. 1083, the Sales Tax Tribunal was legally justified to calculate the interest imposed u/s 8(1) from the date, after three months from the date of assessment order instead of from the date when the admitted tax became due?"*

Answer to question Nos. 1 and 2:

4) The assessee is a dealer of cotton yarn. This revision pertains to the assessment year 1980-81. The assessee admitted inter-state sale of cotton yarn to the tune of Rs. 43,92,143.83 and admitted liability was alleged to be of Rs. 1,09,803.58. If an assessee fails to pay tax on admitted liability, he is liable to pay interest at the rate of 2% per

month (24% per annum) on the tax under Section 8(1) of the U.P. Sales Tax Act, 1948. In case of assessment or re-assessment or enhancement, the liability to pay interest is provided under Section 8(1)-B. Section 8(1) and Section 8(1)-B are being reproduced below.

> *"8. Payment and recovery of tax. –(1) The tax admittedly payable shall be deposited within the time prescribed or by thirty Ist day of August, 1975, whichever is later, failing which simple interest at the rate of two per cent (per mensem) shall become due and be payable on the unpaid amount with effect from the day immediately following the last date prescribed (till the date of payment of such amount) whichever is later, and nothing contained in Section 7 shall prevent or have the effect of postponing the liability to pay such interest.*
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> *Explanation. – For the purpose of this sub-section, the tax admittedly payable means the tax which is payable under this Act on the turnover of sales or, as the case may be, turnover of purchases, or of both, as disclosed in the accounts mentioned by the dealer or admitted by him in any return or proceeding under this Act, whichever is greater, or, if no accounts are maintained then accordance to the estimate of the dealer [and includes the amount payable (under Section 3-B or sub-section (6) of Section 4-B.]" ……..*

> *"8(1-B) If the tax (other than the tax admittedly payable to which sub-section (1) applies) assessed, reassessed or enhanced by any authority or Court remains unpaid for three months after the expiration of the period specified in the notice of assessment and demand, simple interest at the rate of one and half per cent per mensem on the unpaid amount calculated from the date of such expiration shall become due and be payable:*
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> *Provided that the amount of interest under this sub-section shall be recalculated if the amount of tax is varied on appeal or revision or by any order of a competent Court or authority."*

Both the appellate authorities namely, Deputy Commissioner of Sales Tax and Sales Tax Tribunal have held that the assessee deposited tax at the rate of 2.5%, which was payable if the sale was made after obtaining Form 'C'. But, in the present case, Form 'C' was not obtained and initially the assessing officer accepted tax at the rate of 2.5% and later reassessment was made at the rate of 5% per annum. The order dated 31.07.1989 passed under Section 22 of the aforesaid Act makes the facts amply clear in this regard. As such, in such circumstances in view of the principle of law laid down in ***Krishan Das and Brothers Vs. State of U.P.; 1981 U.P.T.C. 1083*** and ***Quraishi Crucible Center Vs. Commissioner of Sales Tax; 1985 U.P.T.C. 870,*** since the assessment at the rate of 5% per annum was not made initially, as such, the interest

imposed by the assessing authorities on the tax from 01.04.1980, cannot be said to be justified. There appears no intention on the part of the assessee to avoid the tax, in the aforesaid circumstances of the case, as such, interest imposed under Section 8(1) and order passed under Section 22 of the U.P. Sales Tax Act, 1948 are rightly set aside by the Deputy Commissioner of Sales Tax and confirmed by the Sales Tax Tribunal, as it was a case of reassessment.

5) Accordingly, both the above questions are answered in favour of the assessee and the revision is dismissed.

(Prafulla C. Pant, J.)

Dt. 26.07.2005
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